IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4783 of 1989
with
SPECIAL CIVIL APPLICATION No.6008 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANLAL R KHORSMA I/C.PRINCIPAL,

Versus

VIRABHAI TALSIBHAI PARMAR

Appearance:

1. Special Civil Application No. 4783 of 1989
MS MAMTA R VYAS for Petitioner No. 1-2
MR MUKUND M DESAI for Respondent No. 1
MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/03/2004

COMMON ORAL JUDGEMENT

These petitions are filed by the In-charge Principal, SKM High School, Kandora (SCA No.4783 of 1989) [hereinafter referred to as "the management" for short] and Virabhai Talshibhai Parmar (SCA No.6008 of 1989) (hereinafter referred to as "the teacher" for short) respectively, being aggrieved of the judgement and order dated 12.06.1989 in Application No.17 of 1987 rendered by the Honourable Gujarat Secondary Education Tribunal at Ahmedabad (hereinafter referred to as "the Tribunal").

2. The management being aggrieved of the order quashing and setting aside the order dated 31.07.1987 and order of reinstatement with half back wages from 01.08.1987 till date of reinstatement while the teacher approached this Court complaining that he should have been granted full back wages.

3. The facts of the case are that the teacher was working as Assistant Teacher with the management with effect from 01.08.1973. It is recorded by the Tribunal that the claim of the teacher that, 'prior to the present dispute there was no complaint regarding his work or behaviour' is not wholly correct. That there were some minor disputes in the past, but then the major dispute arose only after one Shri R.R. Khorsma was given the charge of the post of Head Master as In-charge Headmaster with effect from 01.08.1985. The In-charge Headmaster asked the teacher to discharge the duties as Class Teacher of Standard IX-B, since then the dispute aggravated, mainly on account of disobedience on the part of the teacher coupled with the heaping insults of the In-charge Head Master by the teacher who insisted for every order to be in writing. Not taking the class register on one pretext or the other. On 24.08.1985 the teacher did not go to take a period in proxy for another teacher and claimed that he was not free in that period as he was to engage his regular class as per the time table. It is on record that lot of correspondent took place between the parties. Ultimately by a communication dated 06.11.1985, a copy of which is produced at Exhibit 3 (on record of the Tribunal), the teacher was served with the charge sheet and was asked to show cause as to why disciplinary action should not be taken against him for the misconduct alleged against him. The following are the charges levelled against the teacher:

(i) That the applicant had disobeyed the orders in connection with the work of class teachership.

(ii) That he had indulged in unbecoming behaviour towards his superior, viz. the In-charge Headmaster.

(iii) That he had disobeyed the orders in connection with proxy arrangement.

(iv) That he had illegally claimed and received LTC amount of Rs.716/-.

(v) That he had tampered with the records of the school by making wrong and incorrect endorsements.

(vi) That he asked the In-charge Headmaster to send copy of his reply to the DEO.

(vii) That he wrote insulting and disparaging letters to In-charge Headmaster and had committed acts of discipline, negligence and insolence.

4. The Teacher did not reply to the charges and went on asking for copies of the documents, one after the other. At last the management instituted domestic inquiry. The Inquiry Officer examined several witnesses including the In-charge Headmaster, some teachers, peons and the trustee-member of the management. It is recorded by the Tribunal that on some of the dates of inquiry the delinquent remained present. He cross examined some of the witnesses, refused to cross examine some and on couple of occasions he did not remain present, resulting into examining of witnesses ex parte in his absence. The Inquiry Officer submitted his report wherein it is recorded that charges no.4 and 6 relating to LTC amount and sending copy of reply to the District Education Officer (DEO), 'not pressed' and that other charges are 'proved'. The management by its letter dated 03.03.1987 (Exhibit A-20 on the record of the Tribunal) supplied a copy of the report to the teacher. Thereafter, an application was made to the DEO for grant of approval under section 36(1)(b) of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as "the Act"). The DEO by his letter dated 31.07.1987 (Exhibit A-22) granted approval to the proposal, pursuant to which by the impugned order dated 31.07.1987 (Exhibit A-23) the teacher was dismissed.

5. The main contention raised by the management in its petition is as to, whether the Tribunal was justified in interfering with the order of punishment having

recorded in no uncertain terms that, "the charges of disobedience, unbecoming behaviour and indiscipline are proved." It is also contended that, 'the Tribunal has not awarded any punishment except not awarding 50% back wages'. The learned advocate, Ms.Mamta Vyas appearing for the management relied upon two judgements of the Honourable the Supreme Court. One in the matter of Sanchalakshri and another Vs. Vijayakumar Raghuvirprasad Mehta and another, reported in (1998) 8 SCC 245, and another in the matter of Shriji Vidyalaya and another Vs. Patel Anil Kumar Lallubhai and another, reported in (1998) 9 SCC 561 to contend that it is a settled legal position that, 'the Tribunal has no jurisdiction to interfere with the quantum of punishment unless the Tribunal is of the opinion that the punishment imposed is shockingly disproportionate to the misconduct'. The learned advocate also contended that, 'the scope of review by the Tribunal in relation to the disciplinary matters is very narrow and it has no power to reappreciate the facts of the case and give its own finding and substitute the punishment'. She submitted that the Honourable the Apex Court has held that the provisions of sections 36, 38 and 39 of the Act do not empower the Tribunal to undertake such exercise.

6. The learned advocate for the management strenuously contended that, 'it is a settled legal position that the High Court/ Tribunal while exercising the power of judicial review cannot substitute its own conclusions, as laid down by the Honourable the Apex Court in the matter of B.C. Chaturvedi Vs. Union of India and others, reported in (1995) 6 SCC 749. In para 18, the Honourable the Apex Court has observed thus,

> " .. .. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

7. The learned advocate for the management submitted that in the present case the Tribunal has committed a grave error inasmuch as after it has recorded a

finding that, 'the charge of disobedience, unbecoming behaviour and indiscipline are proved', it has also recorded that:

> "It is also true that the Regulations made under the Act provide that such misconducts would render an employee liable to be dismissed."

and thereafter, for no cogent reasons the Tribunal has taken a somersault and has held that, "the punishment like dismissal cannot be inflicted lightly". The Tribunal could not have done so without assigning cogent reasons for the same. The Tribunal should have given convincing reasons justifying that punishment of dismissal cannot be inflicted even in cases of this nature where a teacher indulges in an act of disobedience, behaves in a manner, rendering him unbecoming of a teacher and indulges in other acts of indiscipline. One of such act being the teacher had written a letter dated 24.08.1985, a copy of which was produced before the Tribunal (at Exhibit 'D'), wherein he called the In-charge Headmaster a liar and has alleged that, 'though In-charge Headmaster is a member of backward class is out to uproot the backward class people by stabbing them in the back'. The Tribunal has taken note of the same and recorded that,

> ".. .. All in all the language of the delinquent in his letter at Exh.D and other letters is full of venom, vituperations and abuses. Under these circumstances, the charge that the delinquent behaved in an unbecoming manner towards his superiors and especially towards the I/c Headmaster is required to be held as proved."

The Tribunal has also recorded that, 'the attitude of the teacher was adamant to the extent of being beyond repair.' This is reflected from the following:

> ".. .. At one stage I suggested that the applicant should express regret and assure obedient, disciplined and cooperative behaviour in future. On such a statement the opp. school should drop the charges and give a fresh chance to the applicant. The opp. school responded positively but the applicant was not ready to budge from his rigid and hard stance."

Despite this, for unknown reasons the Tribunal has not

only thought it fit to quash and set aside the order of punishment, but has also thought it fit not to impose any punishment and has denied back wages only to the extent of 50%. Denying 50% back wages is no punishment. Thus, the Tribunal has allowed the teacher to go 'scot free', without any punishment for the aforesaid acts of disobedience, unbecoming behaviour and a proven act of indiscipline.

8. Mr.Mankad, the learned advocate appearing for the petitioner in Special Civil Application No.6008 of 1989 submitted that the judgement and order of the tribunal of quashing and setting aside the impugned order of dismissal is in accordance with law. He requested that taking into consideration the fact that the teacher had been working in the same school since 1973 and till 1985 there were no serious complaints against the teacher, it should be held that it was only on account of some personal disliking on the part of the In-charge Headmaster that the petitioner landed himself in trouble. Therefore, the judgement and order of the Tribunal be modified and full back wages be awarded. The submissions of Mr.Mankad are not found of any merits and hence do not find favour with the Court. In view of the fact that the Tribunal itself has recorded that even in the past there were disputes, may be of minor nature. Judicial notice can be taken of the fact that in a private educational institution unless an employee becomes incorrigible and unruly, coercive steps are not taken in the matter. More particularly in educational institutions where teacher is supposed to set an example of disciplined behaviour before the students, the management normally overlooks small disputes and avoids taking them to their logical conclusion.

9. In view of the aforesaid two judgments of the Honourable the Apex Court cited by the learned advocate for the management and also in view of the judgement relied upon by the learned Assistant Government Pleader, Mr.M.S. Rao, in the matter of Union of India & another Vs. G. Gunayutham (dead) by LRs., reported in AIR 1997 SC 3387, and in the matter of U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and others, reported in AIR 2000 SC 1163, this Court is of the considered opinion that the Tribunal has committed an error by exceeding its jurisdiction in exercising power of judicial review in the matter of punishment imposed by the disciplinary authority without assigning any reason to hold that the same was shocking the conscience of the Tribunal and not awarding any punishment to the teacher concerned.

10. In view of the aforesaid discussion Special Civil Application No.4783 of 1989 is allowed. The judgement and order of the Honourable Gujarat Secondary Education Tribunal at Ahmedabad in Application No.17 of 1987 dated 12.06.1989 is hereby quashed and set aside. The order of dismissal dated 31.07.1987 stands restored. Rule is made absolute. No order as to costs.

11. Consequently, Special Civil Application No.6008 of 1989 is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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